

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE: B-182380

DATE: February 19, 1975

MATTER OF: Rogers Trading Company, Inc.

## DIGEST:

Where Government's administrative error in sale of surplus property resulted in notification of award being sent to second highest bidder on bidders' abstract list, unauthorized award must be set aside and property awarded to bidder who submitted highest total price bid.

Rogers Trading Company, Inc. (Rogers) protested the award of a contract to M P Surplus Sales (M P) for Item 5 under sales invitation for bids (IFB) No. 31-5094 issued by the Defense Property Disposal Service (DPDS), Battle Creek, Michigan.

Item 5, described as 41 flyers' helmets, was advertised as "one lot" with a total acquisition cost of \$3,376 and estimated weight of 110 pounds. Bids were to be submitted in accordance with paragraph 5(b) of the General Sale Terms and Conditions (Standard Form 114C, January 1970 edition), incorporated by reference in the sale (page 20 of the IFB), which stated:

"(b) When bids are solicited on a 'lot' basis, Bidders should submit a single total price in the Total Price Bid column of the bid sheet. Bidders should not make any entry in the Unit Price Bid column. In the event a Bidder submits a total bid price and also a unit bid price which are not identical, the unit bid price will not be considered."

The record indicates that all bids received at the September 17, 1974, opening were turned over to the keypunch section for processing at DPDS, and then forwarded to the Defense Property Disposal Region-Memphis for audit. The bidder abstract listing showed Bidder 40 (M P) to be the high bidder for Item 5 with a total price bid of \$167.22. However, during the audit it was discovered that the

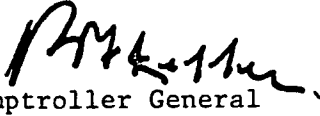
abstract erroneously showed a total price bid of \$5.61 for Bidder 125 (Rogers) which had actually submitted a unit price of \$5.61 and a total bid price of \$230.01. Although Rogers' corrected total price bid of \$230.01 was marked in red ink in the total bid column, this figure was not brought forward and marked in line as the actual high bid. Since the sales contracting officer did not note the correction, Item 5 was awarded to M P at the lower total bid price of \$167.22.

The error remained undetected until a representative of Rogers learned of the award at a price less than its high bid. Since the error had been made by the Government, and the property had not been released, Rogers requested that it be awarded the item. M P was advised of the error in award; however, after conducting a physical inspection of the item, it informed the contracting officer that the company wished to retain the award for the property. The holding activity (Defense Property Disposal Office-Fort Rucker) was instructed to withhold delivery of the property pending disposition of the protest.

The statute governing the disposition of surplus Government property (40 U.S.C. § 484) requires that advertisements for bids to be made through such methods, and on such terms, as shall permit full and free competition which is consistent with the value and nature of the property, and that award be made to the responsible bidder whose bid, conforming to the IFB, will be most advantageous to the Government, price and other factors considered. The requirement for award on the basis of the most advantageous bid to the Government was also set forth under Part 3, Section D of the Special Sealed Bid Conditions (Standard Form 114C-1, January 1970 edition) of the sale. This Office has also held that where the highest bid for the purchase of Government surplus sold under competitive bidding procedures is solicited, but through an administrative error award has been made to the second highest bidder, the interests of the United States, as well as the duty of the contracting officer to award such contracts to the highest bidder, require that such unauthorized award be set aside and award made to the highest bidder. B-169550, June 30, 1970. 36 Comp. Gen. 94 (1956). We believe a similar conclusion must be reached under the circumstances of this case.

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Accordingly, our Office concurs in the administrative recommendation that the improper award to M P Surplus Sales Company should be set aside and that Item 5 be awarded to Rogers Trading Company, Inc., as the high bidder.

  
Deputy Comptroller General  
of the United States